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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,553	12/20/2001	Matthew J. Birdsall	P105 CON 3	6097
28390	7590	08/01/2006	EXAMINER	
MEDTRONIC VASCULAR, INC. IP LEGAL DEPARTMENT 3576 UNOCAL PLACE SANTA ROSA, CA 95403			THALER, MICHAEL H	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/029,553	BIRDSSL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Thaler	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 July 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 20-24,28,31,32,36 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 20-24,28,31,32,36 and 42 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 12, 2006 has been entered.

Claims 20-23, 28, 31 and 42 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sawyer (5,108,417). Sawyer discloses a stent comprising at least one strut having a transverse cross section (e.g. the second of the five sections shown in figure 2, i.e. the section just to the left of the section below arrow A), the transverse cross section having a substantially flat top circumferential side (at the top of the section), a substantially flat bottom circumferential side (at the bottom of the section) that is substantially parallel to the top circumferential side (since the angle between the sides is relatively small) joined together through a substantially continuously curved left side (at the left of the section) and a substantially continuously curved right side (at the right of the section). Alternatively, it would have been obvious that

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the top and bottom sides are "substantially parallel" as claimed, since they are almost parallel. As to claim 21, the strut has a plurality of straight sections (the top and bottom sides which are straight as seen in figure 2) joined by a plurality of crown sections (the left and right sides which are curved as seen in figure 2). As to claim 31, the delivery system described in col. 5, lines 3-11 includes a catheter.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer (5,108,417) in view of Wolff (5,104,404). Sawyer fails to disclose a second stent fused to the stent. However, Wolff teaches that a plurality of stents should be fused together in order to obtain the advantages of allowing use of unequal diameter stent segments as the artery diameter changes as well as permitting articulation between adjacent stent segments (col. 1, lines 42-52 and col. 4, lines 43-50). It would have been obvious to provide a plurality of Sawyer stents fused together so that the Sawyer device too would have this advantage.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer (5,108,417). Sawyer fails to disclose the catheter being a balloon catheter. However, it is old and well known to use a balloon catheter to further expand a self-expanding stent after it has self expanded partially, in order

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to insure that it expands fully. It would have been obvious to make the Sawyer catheter a balloon catheter so that it too would have this advantage. The above well known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion (M.P.E.P. 2144.03).

Applicant's arguments filed June 12, 2006 have been fully considered but they are not persuasive. Although the top and bottom sides of the Sawyer strut (in cross section) are clearly not parallel, the claims do not require the sides to be parallel. The Sawyer sides are substantially parallel since they are almost parallel because the angle between them is relatively small. Although the left and right sides of the Sawyer strut (in cross section) form a sharp corner at their junction with the bottom side, the claims do not preclude this. For example, claim 20 requires the top and bottom sides to be joined together through a "continuously curved left side and a continuously curved right side". The left and right sides of the Sawyer cross sectional configuration are clearly continuously curved. That is, they are curved from one end (where they intersect with the top side) continuously to the other end (where they intersect with the bottom side). The claims are silent as to the shape of the intersection of the left and right sides and the top and bottom sides.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht  
7/25/06



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731